

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

F. STUART WESTMORLAND,

Plaintiff,

v.

MICHELE WESTMORLAND,

Defendant.

No. C07-1435MJP

ORDER ON DEFENDANT'S  
MOTION REGARDING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court on Defendant's motion to strike Plaintiff's motion for summary judgment. (Dkt. No. 10.) Styled as a "Motion to Reset Plaintiff's Motion for Summary Judgment to the Correct Calendar Date," Defendant requests that the Court remove Plaintiff's improperly calendared motion for summary judgment from the Court's calendar and prohibit Plaintiff from refileing any dispositive motion until after the Court has ruled on Defendant's motion to dismiss. Without waiting for Plaintiff to respond, the Court DENIES Defendant's motion.

Defendant moves to strike Plaintiff's motion for summary judgment because it was improperly calendared on the Court's motions calendar. Indeed, on the physical document itself, Plaintiff identified the incorrect noting date. But when Plaintiff electronically filed his motion, he correctly noted it on the Court's motions calendar. The motion was filed on October 4, 2007, and the correct noting date is therefore October 26, 2007. Because October 26 is the noting date currently reflected on the Court's motions calendar, no change to the noting date for Plaintiff's motion for summary judgment is necessary.

1 Defendant also requests that the Court consider Defendant's motion to dismiss for lack of  
2 subject matter jurisdiction before considering Plaintiff's motion for summary judgment. The Court  
3 will not preclude the filing of a summary judgment motion that otherwise complies with the local and  
4 federal rules just because there is a competing motion to dismiss. But as a practical matter, the Court  
5 will investigate whether it has jurisdiction over Plaintiff's claims before ruling on the summary  
6 judgment motion. Defendant must respond to Plaintiff's motion for summary judgment, even if that  
7 response includes a Rule 56(f) request.

8 Dated this 17<sup>th</sup> day of October, 2007.

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11 Marsha J. Pechman  
12 U.S. District Judge  
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